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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

ADI ACQUISITION CO., LLC,

Plaintiff,

v.

THEODORE L. VALLAS

Defendant.

Case No. 3:18-CV-01871-HZ

DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES

For his Answer and Affirmative Defenses, Defendant Theodore L. Vallas, by and through undersigned counsel, admits, denies and alleges as follows in response to the complaint of Plaintiff ADI Acquisition Co., LLC.

INTRODUCTION

1. Defendant admits that this is an action to enforce a personal guaranty and that any documents referenced in Plaintiff's Complaint speak for themselves. Defendant denies the remaining allegations in paragraph 1.

PARTIES

2. Defendant admits that Plaintiff is an Oregon limited liability company. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2, and on that basis, denies the remaining allegations in paragraph 2.

3. Defendant admits the allegation in paragraph 3.

JURISDICTION AND VENUE

4. Paragraph 4 contains legal averments which do not require admission or denial.

5. Paragraph 5 contains legal averments which do not require admission or denial.

6. Paragraph 6 contains legal averments which do not require admission or denial.

7. Paragraph 7 contains legal averments which do not require admission or denial.

UNDERLYING FACTS

8. Defendant admits the existence of a Note dated March 20, 2018 between Carlsbad-Palomar Airlines, Inc., (“Maker”) and Plaintiff, a copy of which is attached as Exhibit 1 to Plaintiff’s Complaint (“Note”). The Note speaks for itself. Unless otherwise admitted, the allegations of paragraph 8 are denied.

9. Defendant admits that he executed a Personal Guaranty dated March 20, 2018, a copy of which is attached as Exhibit 2 to Plaintiff’s complaint. The Personal Guaranty speaks for itself. Unless otherwise admitted, the allegations of paragraph 9 are denied.

10. Defendant admits the existence of a Personal Guaranty dated March 20, 2018, a copy of which is attached as Exhibit 2 to Plaintiff’s complaint. The Personal Guaranty speaks for itself. Unless otherwise admitted, the allegations of paragraph 10 are denied.

11. Defendant admits the existence of a Personal Guaranty dated March 20, 2018, a copy of which is attached as Exhibit 2 to Plaintiff's complaint. The Personal Guaranty speaks for itself. Unless otherwise admitted, the allegations of paragraph 11 are denied.

12. Paragraph 12 contains legal averments which do not require admission or denial. To the extent an answer is required, Defendant denies the allegations in paragraph 12.

13. Defendant admits that Plaintiff sent a letter to Maker and Defendant on May 14, 2018. That letter speaks for itself. Unless otherwise admitted, the allegations of paragraph 13 are denied.

14. Defendant admits that interest payments were made to Plaintiff in the amounts and at the times alleged in paragraph 14. Unless otherwise admitted, the allegations of paragraph 14 are denied.

15. Paragraph 15 contains legal averments which do not require admission or denial. To the extent an answer is required, Defendant denies the allegations in paragraph 15.

CAUSE OF ACTION

(Breach of Guaranty)

16. Defendant incorporates the answers to Paragraphs 1-15 above.

17. Paragraph 17 contains legal averments which do not require admission or denial. To the extent an answer is required, Defendant denies the allegations in paragraph 17.

18. Paragraph 18 contains legal averments which do not require admission or denial. To the extent an answer is required, Defendant denies the allegations in paragraph 18.

GENERAL DENIAL

19. Except as specifically admitted above, Defendant denies each and every allegation of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense (Anticipatory Repudiation)

1. The Note was executed in connection with a Stock Purchase Agreement (“SPA”) between Maker and Plaintiff, dated December 22, 2017, with addendums dated February 27, 2018 and March 20, 2018. The SPA pertained to the sale of Aerodynamics, Incorporated. Plaintiff anticipatorily repudiated the SPA by failing to perform under the SPA in connection with Plaintiff’s obligation to pay Aerodynamics Inc.’s attorney fees. Plaintiff’s repudiation discharged any contractual obligations owed by Maker under the Note, thereby discharging any obligations owed by Defendant under the Guaranty. To the extent required by law, Defendant is ready, able and willing to pay the amount sought by Plaintiff under the Personal Guaranty, if and when Plaintiff’s repudiation is cured or as so ordered.

Second Affirmative Defense (Breach of Contract)

2. In support of this affirmative defense, Defendant incorporates by reference the allegations in the first affirmative defense.

Third Affirmative Defense (Unjust Enrichment)

3. In support of this affirmative defense, Defendant incorporates by reference the allegations in the first affirmative defense and additionally states that it would be unjust to allow Plaintiff to obtain and/or retain the benefits conferred by the SPA, Note and Guaranty absent full performance by Plaintiff under the same. Plaintiff is aware of the benefits conferred on it by these agreements.

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**Fourth Affirmative Defense
(Failure of Consideration)**

4. In support of this affirmative defense, Defendant incorporates by reference the allegations in the first affirmative defense.

**Fifth Affirmative Defense
(Invalid Contract due to Unconscionability)**

5. Plaintiff took advantage of the circumstances under which the Note and Guaranty were negotiated and drafted the terms of the Note and Guaranty to be unconscionably one-sided and oppressive. Defendant was 96 years old when negotiations related to the SPA began, and Plaintiff knew that Maker and Defendant were under substantial time constraints for purposes of finalizing the Note and Guaranty.

**Sixth Affirmative Defense
(Duress)**

6. In support of this affirmative defense, Defendant incorporates by reference the allegations in the fifth affirmative defense.

**Seventh Affirmative Defense
(Invalid Contract due to Fraud, Deceit, or Misrepresentation)**

7. On information and belief, Plaintiff fraudulently concealed from Defendant facts material to the SPA, Note and Guaranty, including facts regarding the financial status and legal issues facing Aerodynamics, Inc. Plaintiff's concealment involved misrepresentations and/or omissions, and was done knowingly for purposes of inducing Defendant and related parties to enter into the SPA, Note and Guaranty. On information and belief, during the period prior to execution of the Note/Guaranty, Plaintiff concealed information related to payment of Aerodynamics, Inc.'s legal fees and non-payment of Aerodynamics, Inc.'s vendor contracts. Defendant was unaware of

Plaintiff's misrepresentations and omissions. Defendant relied, and had a right to rely, on Plaintiff's misrepresentations and/or omissions made in negotiating the SPA, Note and Guaranty.

**Eighth Affirmative Defense
(Invalid Contract due to Unclean Hands/In Pari Delicto)**

8. In support of this affirmative defense, Defendant incorporates by reference the allegations in the seventh affirmative defense.

**Ninth Affirmative Defense
(Breach of Duty of Good Faith and Fair Dealing)**

9. In support of this affirmative defense, Defendant incorporates by reference the allegations in the first and seventh affirmative defenses.

**Tenth Affirmative Defense
(Failure to State a Claim)**

10. Plaintiff has failed to state a claim upon which relief may be granted.

Non-Waiver of Additional Affirmative Defenses

11. For purposes of avoiding waiver, and based on the above allegations, Defendant asserts the following affirmative defenses: failure of condition precedent; breach of warranty; failure to mitigate; estoppel, waiver, accord and satisfaction, statute of frauds, right of offset, incapacity, mistake, impracticability, frustration of purpose. To the extent permitted by law, Defendant reserves the right to assert additional affirmative defenses and additional facts in support of the above affirmative defenses.

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WHEREFORE, Defendant prays for the following:

- A. Entry of judgment for Defendant and against Plaintiff;
- B. An award of costs and expenses incurred in defending this action; and
- C. Such other and further relief as the Court deems just and proper.

Dated: February 11, 2019

Respectfully submitted,

HOLLAND & KNIGHT LLP

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES to be served on the following person[s]:

Ava L. Schoen
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Attorney for Plaintiff

by the following indicated method or methods:

- ☒ by CM/ECF electronically mailed notice from the Court on the date set forth below.
- ☐ by mailing full, true and correct copies thereof in sealed, first class postage prepaid envelopes, addressed to the parties and/or their attorneys as shown above, to the last-known office addresses of the parties and/or attorneys, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.
- ☐ by causing full, true, and correct copies thereof to be hand-delivered to the parties and/or their attorneys at their last-known office addresses listed above on the date set forth below.
- ☐ by sending full, true, and correct copies thereof, via overnight courier in sealed, prepaid envelopes, addressed to the parties and/or their attorneys as shown above, to the last-known office addresses of the parties and/or their attorneys, on the date set forth below.
- ☐ by faxing full, true, and correct copies thereof to the fax machines which are the last-known fax numbers for the parties' and/or attorneys' offices, on the date set forth below.

DATED February 11, 2019.

s/ Dayna E. Underhill
Dayna E. Underhill